

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

|   |   |                    |
|---|---|--------------------|
| <b>PERRY A. SEREDA</b>  | ) |                    |
| Claimant  | ) |                    |
| VS.   | ) |                    |
|   | ) |                    |
| <b>WESSEL FRAMING COMPANY</b>                                 | ) | Docket No. 237,326 |
| Respondent  | ) |                    |
| AND   | ) |                    |
|   | ) |                    |
| <b>KANSAS BUILDING INDUSTRY WORKERS<br/>COMPENSATION FUND</b> | ) |                    |
| Insurance Fund  | ) |                    |

**ORDER**

Claimant appealed the September 1, 2000 Award entered by Administrative Law Judge Julie A. N. Sample. The Board heard oral argument on March 7, 2001.

**APPEARANCES**

Claimant appeared by Allan H. Bell of North Kansas City, Missouri. Respondent and its insurance fund appeared by Matthew S. Crowley of Topeka, Kansas.

**RECORD AND STIPULATIONS**

The record considered by the Board and the parties' stipulations are listed in the Award.

At oral argument to the Board, claimant requested that the letter to Dr. Theodore Sandow's clinic requesting an independent medical evaluation be made part of the evidentiary record. Following oral argument, claimant also filed a written motion to add that letter to the record. Respondent and its insurance fund have objected. Therefore, whether the letter to the clinic should be considered part of the evidentiary record is an issue in this claim.

**ISSUES**

This is a claim for a July 17, 1998 dog bite incident and resulting injuries to the right knee. Claimant alleges the claim is compensable as he was bitten at his employer's residence after picking up his paycheck.

The Judge found that claimant's injury occurred during a social event rather than while performing the duties required of his job and, therefore, denied benefits pursuant to K.S.A. 1998 Supp. 44-508(f). The Judge also found (1) claimant was not required to pick up his paycheck at the employer's residence; (2) claimant had picked up his check and cashed it before the injury occurred, which broke any link between work and the injury; (3) neither claimant nor his coworkers picked up any tools at the employer's residence for an alleged upcoming job; (4) work was not the focus of discussion at the gathering; and (5) the employer derived no benefits from claimant's presence at the gathering.

Claimant contends Judge Sample erred. Claimant argues that it was mandatory, or he believed that it was mandatory, to go to his employer's residence to pick up his check. Claimant also argues that the gathering at the employer's residence was intended as a meeting to discuss construction techniques and work safety issues, and to build camaraderie among the employees. Therefore, claimant requests the Board to reverse the Award and to grant benefits.

Conversely, respondent and its insurance fund request the Board to affirm the denial of benefits. In addition to adopting the Judge's findings and conclusions, respondent and its insurance fund also request the Board to find claimant failed to prove the extent of his functional impairment according to the fourth edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment*.

The issues before the Board on this appeal are:

1. Was claimant injured during a social event or during activities required of his job?
2. If claimant was injured during a social event, was he required to attend?
3. If this claim is compensable, what is the nature and extent of claimant's injuries and what benefits is claimant entitled to receive?
4. Should the letter to Dr. Theodore Sandow's clinic requesting an independent medical evaluation be admitted as part of the evidentiary record?

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Board finds and concludes:

1. The Award should be affirmed.
2. The Board adopts the Judge's findings and conclusions that claimant was injured during a social event that he was not required to attend.
3. Claimant was injured after cashing his paycheck and after returning to the employer's residence to drink beer. The Board affirms the Judge's conclusion that leaving the employer's residence to cash the paycheck broke any link between claimant's work and the injury,

assuming arguendo one existed under these facts in the first instance, which the Board concludes did not.

4. As the Judge indicated in the Award, the outcome of this claim is controlled by K.S.A. 1998 Supp. 44-508(f), which specifically provides that injuries occurring during social events where the employee is not required to attend are not compensable under the Workers Compensation Act. That statute provides, in part:

The words, "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to employees while engaged in recreational or social events under circumstances where the employee was under no duty to attend and where the injury did not result from the performance of tasks related to the employee's normal job duties or as specifically instructed to be performed by the employer.

5. As claimant's injuries did not occur as the result of an accident arising out of and in the course of employment, the request for workers compensation benefits should be denied. Based upon that finding and conclusion, the remaining issues are rendered moot and need not be addressed.

6. The Board adopts the Judge's findings and conclusions as set forth in the Award to the extent they are not inconsistent with the above.

**AWARD**

**WHEREFORE**, the Board affirms the September 1, 2000 Award.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 2001.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Allan H. Bell, North Kansas City, MO  
Matthew S. Crowley, Topeka, KS  
Julie A. N. Sample, Administrative Law Judge  
Philip S. Harness, Director